



STATE OF GEORGIA
GOVERNOR'S OFFICE OF WORKFORCE DEVELOPMENT
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Local Area Procurement Technical Assistance

Purpose: This Technical Assistance Guide has been developed to assist Local Workforce Investment Areas (LWIA's) in making informed decisions concerning the procurement of goods and services that will ensure the proper use of federal funds authorized under the Workforce Investment Act of 1998.

Intended Audience: Local Workforce Investment Board (LWIB) members, Local Workforce Investment Area (LWIA) Executive Directors, Finance Directors and employees.

Introduction: The requirements concerning procurement for state and local governmental grantees and subgrantees of goods and services are listed in 29 CFR 97.36. Further procurement requirements can be found in OMB Circulars A-102 and within federal, state, and local laws and regulations.

Local Area Policies and Procedures

Local governmental grantees and subgrantees may follow their own policies and procedures provided they reflect applicable state and local laws and regulations and the procurements conform to the standards of 29 CFR 97.36(b) through (i). Written procedures should be maintained that, at minimum, address the following standards:

- a. A contract administration system which ensures contractors perform in accordance with terms of any award;
- b. A written code of conduct that governs employees engaged in the award and administration of contracts. For further details on required provisions, reference 20 CFR 97.36 (b)(3) and 20 CFR 667.200(a)(4);
- c. Procedures that provide for a review of proposed procurements to avoid the purchase of unnecessary or duplicate items. If applicable, procedure should also include an analysis of lease vs. purchase alternatives;
- d. Process promoting the use of state and local intergovernmental agreements for purchase of common goods and services, as well as the use of Federal excess and surplus;

- e. Process to ensure awards are made only to responsible contractors who can successfully perform the terms of the proposed agreement;
- f. Record of significant history of procurement. Further detail can be found in the below section, “Documents and Records of Procurement File”;
- g. Process for settlement of all contractual and administrative issues arising from procurement. This can include source evaluation, protests, claims, disputes, etc. All violations of law must be referred to local, State, or Federal authority with proper jurisdiction; and
- h. Protest procedures in place to handle and settle disputes related to the award and administration of contracts.

Procurement Methods

All procurement transactions must be conducted in a manner that promotes free and open competition. There are four methods specified in 29 CFR 97.36(d) in which goods and services may be procured. They are as followed:

Small Purchase: This is an informal method for the purchase of services and goods. This procedure can only be used if the price of the deliverable is the overriding factor and can easily be compared to analogous goods/services. Adequate price/rate comparisons should be obtained prior to award, however competitive bidding is not required for small purchases if under the simplified acquisition threshold. Currently, the Federal threshold for small purchases is \$100,000; however the locally and state imposed thresholds may differ. Grantees and subgrantees must adhere to the lower threshold.

Sealed Bids: This is a method in which bids are publically solicited and procurements are awarded to the lowest responsible bidder. Sealed Bid procurements will be firm-fixed-price contracts; either as lump sum or by unit price. Prior to selecting sealed bidding as a preferred method of procurement, LWIA's should be sure the three following conditions are present: a complete and realistic purchase description is available, two or more responsible bidders are willing and able to compete, and the procurement selection can be determined based principally on price.

If conditions are present, the following requirements apply if sealed bids are to be used:

- a. The invitation for bids will be publically advertised and bids shall be solicited from an adequate number of known suppliers.
- b. The invitation for bids, which will include specifications and relevant attachments, shall define the goods or services in order for the bidder to properly respond;
- c. All bids will be publically opened at the time and place prescribed in the invitation for bids;

- d. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and
- e. All bids may be rejected if there is a sound documented reason.

Competitive Proposals: This method of procurement is used when there is more than one prospective bidder and lowest price is not the only determining factor for award. When seeking a variety of methods to achieve the delivery of a good or service, a Request for Proposal (RFP) should be used. Further, competitive proposals also require that a fixed-price or cost-reimbursement contract will be used and the following requirements also apply:

- a. RFP's will be publicized and identify all evaluation factors and their weighted importance.
- b. Proposals will be solicited from an adequate number of qualified sources;
- c. A method will be in place for conducting technical evaluations of the proposals received and for selecting awardees;
- d. Awards will be made to the responsible proposal which is most advantageous to the program, with price and other factors being considered.

Noncompetitive Proposals (Sole Source): This procurement method is the solicitation of goods/services from a single source, or after the solicitation of more than one sources, competition is deemed inadequate. Sole source procurement may be awarded only if one of the following criteria is met:

- a. The good/service is only available from one source;
- b. After solicitation of a number of sources, competition is determined inadequate, typically due to insufficient bids;
- c. Through a formal request, the awarding agency (GOWD) authorizes a noncompetitive proposal; or
- d. Public emergency will not allow a delay resulting from the competitive solicitation process.

Noncompetitive proposals are considered a "last resort" option and LWIAs should exercise caution prior to implementing this procurement method.

Subawards to Debarred and Suspended Parties

Grantees and subgrantees must not make any award to any party which is debarred, suspended or is ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." All parties should be checked for debarment or suspension prior to any federal award being issued.

<https://www.sam.gov/portal/public/SAM/>

Cost-Price Analysis

Prior to receiving bids or proposals, the LWIA should always conduct a cost-price analysis of similar goods or services. This step in the procurement process is mandatory for all procurement action including contract modifications. Evaluating other goods or services available is essential to developing a solicitation that is not biased and can help provide a better understanding of current market prices.

Depending on the type of purchase, costs can be compared by using the following types of methods: line item analysis, comparative analysis, historical analysis, marketing analysis, and risk and/or variable adjustment analysis.

Awarding Agency (GOWD) Review

If requested by awarding agency (GOWD), grantees must make available pre-award review procurement documents, such as requests for invitations for bids, cost quotes, scope of work, etc. when:

- a. A grantee's or subgrantee's procurement procedure fails to comply with procurement standards; or
- b. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid is received in response to solicitation; or
- c. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
- d. The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms

It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take appropriate affirmative action to support women's enterprises and are encouraged to procure goods and services from labor surplus areas. OMB Circular A-102 (2) (d)

Documents and Records of Procurement File

LWIAs should maintain records detailing the significant history of a particular procurement. This file can include:

- Rationale for method of procurement;
- Selection of contract type;

- Copy of solicitation package;
- Copy of the public notification;
- Bidder's List to which notices were mailed;
- List of all organizations/entities sent a solicitation;
- Agenda and minutes of any meeting or conference concerning procurement;
- Log sheet for receipt of bids;
- Copy of each bid received;
- Rating and scoring sheets completed in the evaluation process;
- Documentation of the rationale for selection and funding of any offeror which did not receive the highest score/ranking in the evaluation process;
- Completed cost analysis for each selected bidder;
- High risk determinations and special award/contract conditions, if appropriate.